IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 240 OF 2000
with
Civil Application No. 1176 of 2003
with
Cross Objection (Stamp) No. 9177 of 2001

The State of Maharashtra)
(At the instance of Special Land Acquisition)
Officer No.8, Pune).)..
Appellant

versus

1. Smt. Bhimabai Bhika Gondal, died hence)
deleted. Her L.R. Nos. 4 and 5)

2. Raoji Chimaji Gunjal, Age adult,)
Occ. Agriculture.)

3. Kaluram Krishnaji Gunjal , age adult,)
Occ. Agriculture.)

4. Smt. Bhagubai Khandu Talekar, age adult,)
Occ. Agriculture.)

5. Smt. Tulsabai Kondaji Tanpure, adult,)
Occ. Agriculture)

All r/o Village Bibi, Tal. Khed.)
Dist. Pune.)..Respondents

WITH

FIRST APPEAL NOS. 842 TO 864 OF 2005
with
Civil Application Nos. 2195 to 2217 of 2005 & 4484, 4485 and 4488 of 2007

Mr. K.K. Tated, AGP, for the Appellants in FA Nos.240 of 2000 & 842 to 849 of 2005.
Mr. B.H. Mehta, AGP, for Appellants in FA Nos. 850 to 854 of 2005.
Mr. Y.M. Nakhwa, AGP, for Appellants in FA Nos. 855 to 859 of 2005.
Mrs.G.P. Mulekar, AGP, for Appellants in FA Nos. 860 to 864 of 2005.
Mrs. Pallavi H. Potnis for the Respondents-claimants.

CORAM: **SWATANTER KUMAR, C.J.** &
DR. D.Y. CHANDRACHUD, J.

Judgment reserved on : September 05,2007
Judgment delivered on: September 20,2007

JUDGMENT (Per Swatanter Kumar, C.J.):

1. First Appeal No. 841 of 2005 has been preferred by the State against the judgment and award dated 30th September, 2000 passed by the Reference Court in LAR No. 88 of 1990 titled as *Babu Rama Gandal* vs. *The Special Land Acquisition Officer No.8.* The State has filed Appeals in each of the references as the Reference Court had disposed of 24 References vide the impugned judgment. It needs to be noticed at the very outset that in the impugned

judgment, the Reference court did not discuss and, in fact, the parties had also not led much evidence except mainly relying and tendering the judgment of another reference court, exhibit-33. The judgment passed by the Reference Court related to acquisition of lands under the same notification from the same village. The judgment relied upon was passed by the Reference Court in LAR No. 89 of 1990 decided on 7th February, 1998. In that case, number of sale instances were tendered in evidence and parties had also led oral evidence. LAR No. 89/90 was also challenged by the State in First Appeal No. 240 of 2000. We had, therefore, directed First Appeal No. 240 of 2000 which was listed before the single Judge of the High Court, to be listed before the Division Bench along with these 24 cases which were to be heard by the Division Bench. As all these cases arise from two common judgments based on same evidence as produced by the claimants and the State in LR No. 89/90, it will be appropriate to dispose of all these 25 Appeals by a common judgment.

2. The necessary facts are that the State of Maharashtra issued a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act”) on 19th November, 1981, proposing to acquire land at village Bibi, Tal. Khed, Dist. Pune. In furtherance to this notification, declaration under Section 6 of the Act was issued on 13th May, 1982. The Government took possession of the land and after granting opportunity to the claimants, the Special Land Acquisition Officer (“SLAO”) made his award on 15th September, 1986. In the Award, various sales instances were considered by the SLAO from village Bibi and adjoining villages viz. Vetale, Kadadhe, etc. The sale instances which were examined by the SLAO were from the years 1975 to1981 and he grouped the lands into 5 classes and awarded compensation at the rate of Rs. 6,000/- to Rs. 12,000/- per hectare, depending upon the nature of the land. On the basis of the land revenue assessment and while even considering the valuation, the market value payable on the principle of valuation by income capitalization method, he determined the compensation payable for the entire acquired area of 285 hectares, 46.6 ares at Rs. 75,22,608/-.

3. The claimants, being dissatisfied with the compensation awarded for acquisition of their respective lands, preferred references under Section 18 of the Act, which were referred by the SLAO in accordance with law and were finally adjudicated by the Reference Court. Before that court, in LAR No. 89/90, the claimants claimed that their lands were bagayat lands and the market value of the land was Rs. 40,000/- per hectare. They produced sale instances at Exhibits-24, 26, 28, 32 and 34, 7/12 extracts at exhibits-41 to 45 and also examined six witnesses including the claimant and the parties to the sale deeds. On the basis of this oral and documentary evidence, the Claimants had claimed a sum of Rs. 40,000/- per hectare. However, by way of an amendment before the Reference Court, they amended the claim petition to claim Rs. 80,000/- per hectare. In LR No. 88/90 and the other connected references, the claimants tendered the judgment in LR No. 89/90 as Exhibit-33 and led oral evidence. Exhibit-26 was the oral evidence of the claimants and no other documentary or oral evidence was led by the parties.

4. The Reference Court first decided Reference No. 89/90

vide its judgment dated 7th February, 1998, and awarded compensation to the claimants on the basis of the classification of lands in the following manner. The Reference Court declined to take into consideration the sale deeds, Exhibits-28 and 34. However, while relying upon the average amounts at Exhibits-24, 26 and 32, it awarded the following compensation and even gave an increase at the rate of 10 per cent for the rising trend and inflation.

(i) Jirayat land	Rs. 48,000/-
(ii) Semi-bagayat land	Rs. 72,000/-
(iii)Bagayat land	Rs. 96,000/-

Despite the above determination, the Reference Court restricted the claim of the claimants to Rs. 40,000/- per hectare. In view of the law laid down by the Supreme Court in the case of *Ujjain Vikas Pradhikaran (Ujjain Development Authority)* vs. *Tarachand and another,* (1996) 5 SCC 574, the Reference Court held that the awards were made prior to the amendment of Section 25 of the Act and the claimants would not have the right to ask for enhanced amount of compensation.

5. Following the judgment at Exhibit-33, similar compensation was awarded to the claimants. Upon appreciation of evidence, the

finding has been recorded by the Reference Court in L.R. No. 89/90 Exhibit-33. It will be useful to refer to the said finding which reads as under:

> " 20. This takes me to consider the effect of the sale instance produced by the claimants. The chart thereof is thus:-
>
> | Sr. No. | Exh. No. | Res. No. | Village | Classification | Consideration |
> |---|---|---|---|---|---|
> | (1) | (2) | (3) | (4) | (5) | (6) |
> | 1. | 24 | 126 | Vetale | Jirayat | 5000 |
> | 2. | 26 | 523 | Vetale | Jirayat | 4000 |
> | 3. | 28 | 309 | Velad | Paddy | 9000 |
> | 4. | 32 | 675 | Vetale | Jirayat | 5000 |
> | 5. | 34 | 1342 | Chas | Jirayat | 5000 |
>
> | Gat No. | Area | Rate P.H. | Date | Distance |
> |---|---|---|---|---|
> | (7) | (8) | (9) | (10) | (11) |
> | 197 | 0.13 | 38461 | 1.2.80 | Boundaries Meeting |
> | 129 | 0.08 | 50000 | 18.4.80 | Boundaries Meeting |
> | 266 | 0.11 | 81818 | 16.3.78 | 2 ½ Kms. away |
> | 401 | 0.12 | 41666 | 5.5.78 | Boundaries Meeting |
> | 2539 | 0.09 | 55555 | 7.12.81 | 2 ½ Kms. away |
>
> 21. It will be seen that, the sale deeds at Exs. 28 and 34 are of the villages Walad and Chas and lands properties about 2.5 kms. away. The village Vetale seems to be the village with the boundaries meeting with the village of the acquired lands. In my opinion,

therefore, the sale instances in Exh. 24 & 26 & 26 & 32 can be considered as comparable sales. They are dated 1.2.80, 18.4.80 and 5.5.78.

1. Exh. 24 Res. No. 126 Vetale Jirayat Rs.5000/- Laxman R. Bomble v. Vithal S.Bombale

2. Exh.20 Res.No. 523 Vetale Jirayat Rs.4000/- Shripati T.Bomble v. Dhondu S. Bomble

3. Ex.32 Res.No Jirayat Rs.5000/- Dagdu R. Bomble v. Kisan M. Kondhare

The relevant date in the present case is 19.11.81. The rate per Hectare of these lands are Rs. 38,461/-, Rs. 50,000/- and Rs. 41,666/- total Rs. 1,30,127. 3 = 43,375.66 ps. by giving rise of 10% for about one year due to trend of rising price and inflation, the market price of the lands under these sales would come to round about Rs.48,000/- per hectare, for calculating the market value for the year 1981.

22) According to these witnesses, and the sale deeds, these properties are of Jirayat varieties. Therefore, the rate of semi bagayat, lands and bagayat lands would be and need to be taken as 1 ½ and 2 times thereof i.e. Rs. 72,000/- and Rs. 96,000/- per hectare. In the present case, as I have found that, the claimants have not established that, their lands were perennial bagayat lands by adducing proper evidence, I would consider them to be semi-bagayat lands in the circumstances and, therefore, the market value of the acquired lands

as per thee sale deeds would come to Rs. 72,000/- P.H., as on the relevant dates.

23. This now takes me to the consideration, as to at what rate the claimants would be entitled for the compensation, because, in the present case, initially the claimants had claimed compensation at the rate of Rs. 40,000/- P.H. and later on in the year 1995, by making an amendment application, the rate of claimed to Rs. 80,000/- P.H."

....

"30. .... When in proceedings in the appeal are the proceedings in the continuation of the suit i.e. Claim, and such increase was not allowed by the Hon. Supreme Court, there is no sufficient reason as to why it should be allowed during pendency of the suit i.e. Reference proceedings before the trial Court. More so, when there is no justification adduced by the claimants in this behalf, and much more so in view of the statement of the claims made by the land owners in response to the notices by the Spl. L.A.O. There is no specific contention of the claimant that he had claimed compensation before the L.A.O. at the rate of Rs. 80,000/- P.H., or even @ Rs. 40,000/- P.H. as State did not lead evidence to show that claimant had claimed compensation before L.A.O. treating market value of their lands below Rs. 40,000/- per hectare. In my opinion, in such circumstances, the claim of the claimants at the rate of Rs. 40,000/- P.H. can certainly be allowed for Bagayat land or even semi-bagayat lands, in view of the above findings as regards the market values of the land for these types of lands. Therefore, I find that, the claimants are entitled to the compensation of their acquired lands at the rate of Rs. 40,000/- P.H. i.e. 5.59 x 40,000/- the market value already paid."

6. The above reasoning of the Reference Court shows that the Court had primarily relied upon Exhibits-24, 26 and 32. These are the sale instances relating to Gat Nos. 197, 129 and 401 in village Vetale. The boundary of revenue estate of village Vetale is common with the village Bibi from where the present references had arisen. All the sale instances relate to Jirayat land and after computing the value of adjacent boundaries, common features and kind of the land, the Court fixed compensation for the jirayat land in village Bibi at the rate of Rs. 48,000/- per hectare and then enhanced the compensation payable to semi bagayat and bagayat lands. The statement of the claimants were recorded. Witness Nos. 1 to 5 are the witnesses of the sale instances in the capacity of either as purchaser or as seller. It was on their statement that these documents were exhibited as aforenoticed. Kondiba, Witness No.6, is one of the claimants and in his statement he clearly stated that the land revenue was not changed for a period of 25 years, despite the fact that the lands had improved over a long period. According to him, pumps (lifts) had been fixed for lifting the water from the river

through pipeline to the lands in question and the water was also being used as drinking water. Water was supplied to the land by pipeline and they always had sufficient water for drinking and for their agricultural activity. He also stated that village Vetale was adjacent to village Bibi and the lands in that village were jirayat lands while the acquired lands were mainly bagayat. This witness was cross-examined and he maintained the statement made by him in examination-in-chief and further denied the suggestion that Rs. 7,000/- per hectare was proper and adequate compensation payable for acquisition of their lands. We may also notice that land details as reflected in Exhibits-41 to 45 (7/12 extracts) show that the lands were irrigated lands. Though in some of them the column of irrigation is blank, it also notices that loans were taken for providing lift irrigation.

7. The State made no effort to bring any evidence on record to show that the claims raised by the claimants were unreasonably high, unfair or that the nature of the lands as indicated was not bagayat lands.

8. The main argument raised before us on behalf of the State was that the sale instances of village Vetale were not comparable instances and same compensation could not be awarded to the claimants. This argument, on the face of it, is of no help to the State. It is a settled proposition of law that the sale instances of the adjacent villages can be taken into consideration while determining the compensation payable to the claimants for acquisition of their lands and particularly when none of the parties had led evidence in regard to sale instances relating to the same village from where the lands were acquired. In this regard, reference can be made to a judgment of the Division Bench of this Court in the case of *The State of Maharashtra and others* vs. *Yashwant Kahnu Shirsath* (First Appeal No. 896 of 2005 and others) decided on 19th July, 2007. The relevant observations are as under:

> 7. It is a settled principle of law that the land of the adjacent villages can be made the basis for determining the fair market value of an acquired land. This principle of law is qualified by a clear dictum of the Supreme Court itself that wherever direct evidence i.e. the instances from the same village are available then it is most desirable that the Court should consider those instances rather than relying upon sale instances of the adjoining land. The exclusion of these exhibits from the zone of consideration for determination of the

> controversy thus cannot be said to be incorrect in law. The land in Exhibit-30 relates to village Mukane,while Exhibits-14 and 15 relate to the other two villages viz. Modade and Rayambe. These villages are located around the acquired land but have a better potential as they are closer to industrial area and the Highway. The evidence tendered in relation to the land of the adjacent villages would be a relevant piece of evidence for determining the market value of the land and even the awards relating to those adjoining villages would also be a relevant consideration. Reference in this regard can be made to the case of *Sham Krishan Chandiwala* vs. *Union of* India, 1978 (14) DLT 83 and judgment of the Supreme Court in the case of *Harcharan* vs. *State of* Haryana, AIR 1983SC 43, where the Court stated that subject to the test of comparison of land areawise, topographywise and usewise, awards and transactions in relation to the adjacent areas are the best evidence with regard to valuation of price of land. Still, in the case of *Gokal* vs. *State of Haryana,* AIR 1992 SC 150, the Court was concerned with awarding of compensation to the land similarly situated but vide different notifications issued by the Government under Section 4 of the Act. Trend in increase of the land prices in those areas was also taken to be a relevant consideration".

9. In addition to the above settled principle of law, we may further notice another aspect of this case and that is, the SLAO had himself taken large number of sale instances into consideration of village Vetale. In fact, the compensation was determined by him with reference to the sale of the land in village Vetale. This fact would

stare the State in face and they cannot be permitted even to raise this contention. Once the comparability, nature of the land, its potential and utility are similar, in that event, the mere fact that the sale instances relied upon by the Court relate to an adjacent village would hardly be of any consequence. The reasoning given by the Reference Court in LAR No. 89/90 is correct and does not call for any interference by this Court in First Appeal. The oral and documentary evidence clearly demonstrates that the sale instances taken into consideration by the trial Court fell within the ambit of admissible and relevant evidence.

10. The learned Assistant Government Pleader then contended that the Reference Court has fallen in error of law in not applying deduction of a reasonable extent from the market value arrived at on the basis of the sale instances. The sale instances were of smaller pieces of land and the largest out of them was 13 Ares while the present acquisition is of more than 285 hectares. In this regard, he placed reliance on the decision of this Court dated 7th September,

2007, in the case of *The State of Maharashtra* vs. *Pandurang J. Patil and others (*First Appeal No. 382 of 1995 and others).

11. In order to rebut the contention of the State, on behalf of the claimants it is contended that the claimants, in fact, were entitled to compensation at the rate of Rs. 53,256/- per hectare for jirayat land and consequently higher rates for bagayat land. It is contended that there would be an increase in the price at the rate of 12 per cent per annum for the intervening period of the date of the sale deed and the date of notification. The sale instances relate to 1st February, 1980 and May, 1978, while the notification under Section 4 of the Act was issued on 19th November, 1981. Besides the annual increase in the sale price, no deduction can also be directed to be made from the determined price as the land has to be exempted from the point of view of an individual claimant and not collective acquisition. It is also our view that deduction is not an absolute proposition of law. Reliance in this behalf is placed upon the judgments of the Supreme Court in the case of (i) *Bhagwathula Samanna and others* vs. *Special Tahsildar and Land Acquisition Officer*,

AIR 1992 SC 2298, (ii) *Rameshwar Solanki* vs. *Union of India*, AIR 1995 Delhi 358, and (iii) *Krishi Utpadan Mandi Samiti* vs. *Bipin Kumar and another*, (2004) 2 SCC 283.

12. We have already discussed that the compensation determined by the Reference Court in LAR No. 89/90 is just, fair and in accordance with law. There is definite evidence on record as noticed by the Reference Court that if the lands are not purely bagayat lands, at least they are semi bagayat lands and thus their value has to be higher than the value falling in the jirayat zone. There is no dispute to the fact of identical location and potential of these lands, as they are purely agricultural lands. Thus, even the conclusion of the Reference Court that semi bagayat land should be paid compensation at a higher amount i.e. nearly Rs. 72,000/- per hectare cannot be interfered with.

13. If the contention of the State is to be accepted that there has to be some element of deduction applied for the reason of smallness of plots involved in the sale instances and that the acquisition is of a high track of land, even in that case the deduction

has to be of a minimum grade as there is no development project and the area was being acquired for an irrigation project. In such cases, it would be more than reasonable to apply a deduction of at least 15 per cent on the total value of the land which, in any case, would be liable to be set off against the price rise which the claimants would be entitled to for the intervening period of the sale instances and the date of notification. The grant of 10 per cent by the Reference Court would clearly be on the lower side and this could safely be so held in view of the judgments of the Supreme Court in the cases of *Krishi Utpadan Mandi Samiti* (supra) and *Rameshwar Solanki (*supra). Applying certain amount of guess work, the computation arrived at by the Reference Court, in fact, would remain by and large unaltered even as a result of acceptance of the various contentions raised before us.

14. Having discussed the compensation payable to the Claimants, now we may also notice that in First Appeal No. 240 of 2000, Civil Application No. 1176 of 2003 was filed for condonation of delay in filing the cross objections in the said Appeal. The applicants have stated the reasons that they were deprived of their livelihood

and as they did not receive the additional compensation, they could not file the cross objections in time. This by itself may not have been a sufficient reason for condoning the delay in filing the cross-objections. But, since the State Appeals were heard on merits, in all fairness, the cross objections filed by the respondents could be heard along with the Appeals itself. Thus, we allow this application and condone the delay in filing the cross-objections.

15. In the cross-objection, the cross-objectors, the respondents in the main appeal, have claimed compensation at the rate of Rs. 96,000/- per hectare on the ground that their lands were bagayat lands and the market value should not have been restricted as has been done in the impugned judgment.

16. We have already discussed in detail that the determined compensation does not require any interference by this Court in the present appeals. The cross objection for enhancement, on the ground which we would shortly proceed to discuss, deserves to be dismissed.

17. Having examined various issues in regard to the determination of market value of the acquired land, now we will proceed to discuss the merits of the contentions raised on behalf of the State that the claimants are not entitled to compensation in excess of what they had claimed before the SLAO. It is contended on behalf of the respondents that the notification under section 4 of the Act for acquisition of the land in question was issued on 19th November 1981 while the provisions of section 25 of the Act were amended by Act 68 of 1984 and the amendment came into force with effect from 24th September 1984. The law prevalent at the time of issuance of the notification would govern the rights and obligations of the parties and the claimants would be bound by the value stated by them before the SLAO at the very first instance. In this connection reliance has been placed on the judgments of the Supreme Court in the cases of *Ujjain Vikas Pradhikaran (Ujjain Development Authority)* v. *Tarachand and Anr.*, (1996) 5 SCC 574, *The Land Acquisition Officer cum DSWO A.P.* v. *M/s B.V. Reddy and Sons*, AIR 2002 SC 1045 and the Division Bench decision of this court in *State of Maharashtra v. Govind Goma Vovari and Ors.*, 2006(2) Mah L J 55.

18. The claimants have strenuously argued that the pre-amendment position of section 25 of the Act would not be applicable to the claims. The un-amended provisions of section 25 were in no way rigid and even the Court had taken a view that the Government should award same compensation to the claimants for acquisition of the land similarly situated and in relation to the same notification. In view of the fact that the bar contained in the unamended section 25(2) has already been deleted by the amending provisions, the recourse to unamended provisions would not be permissible. While relying upon the judgment of the Supreme Court in the case of *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and anr.*, AIR 1988 SC 1652, it was stated that the proceedings before the Reference Court have to be considered as original proceedings and the Court can come to an independent conclusion for determining the market value. Reliance has also been placed in the cases of *Raghbir Singh (deceased by Lrs) and ors v. Union of India,* AIR 1985 Delhi 228, *The Special Land Acquisition Officer, (NHW) Dharwad, vs Kallangouda* (FB), AIR 1993 Karnataka 197 and *Bhag Singh and*

ors. v. Union Territory of Chandigarh, AIR 1985 SC 1576 to buttress the contention that the market value can only be one and it is determined by the Collector in the first instance and redetermined by the Reference Court. Keeping in view the provisions of section 25 of the Act, there is now no limitation on the power of the Court to award adequate compensation and the State was bound to pay similar compensation to all the claimants.

19. In the present case the notification was issued on 19th November 1981; the award was made on 15th September 1986. The claimants had initially claimed compensation at the rate of Rs.40,000 and thereafter amended their claim claiming compensation at the rate of Rs. 80,000 per hectare. The claimants thereafter, by further amending their claim, claimed enhanced compensation at the rate of Rs.96,000 per hectare. The Reference Court in Land Reference No.89 of 1990 giving rise to First Appeal No.240 of 2000 relied upon the judgments of the Supreme Court and granted compensation to the claimants at the rate of Rs.40,000 per hectare despite the fact that it determined higher market value of the land but the same ratio was

not applied by the Reference Court in relation to the other appeals. In all these appeals the claimants had claimed compensation at the rate of Rs.40,000 per hectare. At no point of time they claimed higher rate before the SLAO. The provisions of section 25(2) thus would place bar upon the power of the Courts to grant higher compensation to the claimants as the relevant cut off date would be the date of notification under section 4 of the Act.

20. The Supreme Court in the case of *B.V. Reddy* (supra) has stated the principle as under:

> "5.When these appeals had been listed before a Bench of two learned Judges of this Court the decision of this Court in Krishi Utpadan Mandi Samiti, 2000(7) SCC 756, had been placed before the Bench and it was contended that since the award in the case in hand is between 30th of September, 1982 and 24th of September 1984, the compensation could be awarded under the amended provisions of section 25. Since that decision prima facie supported the contention of the claimants-respondents and the Bench was of the view that the said decision requires reconsideration, the matter had been referred to a Bench of three learned Judges and that is how the matter has been placed before us. On the rival submissions made by the counsel for the parties, the following questions arise for our consideration:

1) Can the provision of S 25 of the Land Acquisition Act be construed to be procedural in nature or is substantive?

2) If it is held to be substantive in nature then can the amended provisions of S.25 of the Act would apply to a case where the award of the Land Acquisition Collector had been made much prior to the amendment in question?

3) Whether the judgment of this Court in Krishi Utpadan Mandi Samiti's case can be held to be correctly decided?

4) Whether at all it would be appropriate for this Court to lay down the law and yet not to interfere with the judgment of the Division Bench of Andhra Pradesh High Court with regard to the quantum of compensation awarded?

5) Whether the petition under Art 32 can be entertained for deciding the validity of unamended provisions of S.25?

So far as the first question is concerned, on a plain reading of the same, it is difficult for us to hold that it is procedural in nature. On the other hand, it unequivocally limits the power of the Court on a reference being made to award compensation, more than the amount claimed by the claimants and less than the amount awarded by the Collector. In other words, the substantive right of a claimant ;who has made a claim to the compensation, pursuant to a notice under S 9 cannot be more than the amount claimed and under any circumstances, would not be less than the amount which the Land Acquisition Collector has awarded under S.11, since that award of the Collector is the offer that is made to the

claimant. In course of the arguments, Mr. Rao, the learned counsel for the claimants submitted before us that sub-section (5) of S 25, as it stood prior to its amendment gives sufficient power to the reference court to entertain a claim if the claimant had omitted to make such claim pursuant to notice issued under S.9 and determine the compensation on that. Consequently, Mr. Rao contends that there should not be any embargo on the power of the Court even if the claimant makes a claim pursuant to the notice issued under S.9. We are unable to accept this submission inasmuch as sub-section (5) of S 25 contemplates a situation where the claimant for sufficient reason had omitted to make a claim and the reference court on being satisfied about the same may permit the claimant to make a claim. But the unambiguous and clear language of sub-section (1) of S. 25 as it stood prior to the amendment, makes it explicitly clear that if the claimant has made a claim pursuant to a notice under S.9 then the court would be incompetent to award any amount exceeding the said claim. In our considered opinion, sub-section (5) of S. 25 will be of no assistance to the claimants-respondents in the present case, incidentally, we may deal with the submission of Mr. Rao that the amount claimed was by the lawyer and not by the claimant himself and, therefore, cannot be held to be claim by the claimants, pursuant to notice under section 9 of the Act. On examining the records of the case, we do not find any justification to entertain this submission, inasmuch even in the application made for reference under S 18, the claimant had not taken such a stand. It would, therefore be futile for us to entertain this contention and hold that the claim made by the claimants through his lawyer cannot be held to be a claim by the claimants., This court in the very case of Krishi Utpadan Mandi Samiti, 2000(7) SCC 756, on which the learned counsel for the respondents had placed

reliance, considered the provisions of S 25 and held that the said provision can never be held to be procedural and it is substantive in nature. We approve of the said conclusions and hold that the provision of S 25 of the Land Acquisition Act is substantive in nature.

6. Coming to the second question, it is a well settled principle of construction that a substantive provision cannot be retrospective in nature unless the provision itself indicates the same. The amended provision of S 25 nowhere indicates that the same would have any retrospective effect. Consequently, therefore, it would apply to all acquisitions made subsequent to 24.9.1984, the date on which Act 68 of 1984 came into force. The Land Acquisition (Amendment) Bill of 1982 was introduced in Parliament on 30th of April, 1982 and came into operation with effect from 24th of September 1984. Under the amendment in question, the provisions of S 23(2) dealing with solatium was amended and S 30 (2) of the amended Act provided that the provisions of sub-section (2) of S 23 of the Principal Act as amended by Cl (b) of S. 15 shall apply to and in relation to any award made by the Collector or court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act., after the 30th April 1982 and before the commencement of the Act. It is because of the aforesaid provision, the question cropped up as to whether in respect of an award passed by the Collector between the two dates, the amended provision will have an application or not and that question has been answered by this Court in the Constitution Bench decision in Union of India and anr vs Raghubir Singh 1989(2) SCC 754. Sub-section (2) of S 30 has at all no reference to the provisions of S.25 of the Act. In that view of the matter, question of

> applicability of the amended provisions of S 25 of the Act to an award of the Collector made earlier to the amendment and that matter was pending in appeal does not arise. In our considered opinion, the amended provisions of S. 25 of the Act, not being retrospective in nature, the case in hand would be governed by the unamended provisions of S 25 of the Act".

21. The above principle was also in line with the judgment of the Supreme Court in *Tarachand*'s case (supra) where it was held that the Court was precluded from awarding compensation beyond the amount claimed by the party and that awarding in excess thereof would be illegal. In both these judgments the contentions raised by the claimants were duly examined by the Court and were found to be inconsequential. The Division Bench of this Court in the case of *Govind Goma Govari* (supra), however, did not refer to the above two Supreme Court decisions but came to the same conclusion that the unamended provisions of section 25(2) would be applicable in reference to the notification issued under section 4 of the Act. However, the judgment relied upon by the claimants had not dealt with the proposition and the principle of *ratio decidendi* has no application to the facts of the present case. The judgments primarily

related to post-amendment and are on the point that in view of the amendment of the provisions of section 25 of the said Act, the Government would be under an obligation to grant equal compensation to the claimants and powers vested in the Reference Court to grant adequate compensation, irrespective of the claim and bar contemplated under that section, are much wider in face of power under amended section 25 of the Act.

22. At this stage it may be appropriate to notice the judgments in the case of *Ghaziabad Development Authority* v. *Anoop Singh and anr*, (2003) 2 SCC 484, and *Union of India* v. *Pramod Gupta by Lrs and ors.,* (2005) 12 SCC 1, though the same were not cited by the learned counsel for the parties. In the case of *Anoop Singh* (supra), a Division Bench of the Supreme Court had taken a view that once amendment of the claim petition was carried under the provisions of the Code of Civil Procedure as permissible under section 53 of the Act, the pre-amendment bar contained in section 25 would not be attracted and the Court could award higher compensation to the claimants. In the case in hand the amendment applications have

been filed and amendment has been carried out as well. Thus on the strength of the judgment in *Anoop Singh* (supra) the claimants could have claimed higher compensation. However, subsequently the Supreme Court in the case of Pramod Gupta (supra) has held as under :

> "136. In Anoop Singh whereupon reliance has been placed by Mr. Salve, the Division Bench of this Court did not have any occasion to consider that decisions of this Court in Krishi Utpadan Mandi Samiti vs Kanhaiya Lal and B.V.Reddy which, it will bear repetition to state, are authorities for the proposition that once it is held that Section 25(2) of the Act would be attracted in a given case,, the parties are estopped and precluded from claiming any amount higher than that claimed in their claim petition before the Collector. An observation made to the effect that an application under Order 6 rule 17 would be maintainable having regard to section 53 of the Act, with utmost respect, does not constitute a binding precedent. No ratio has been laid down therein and the observations made therein are without any discussion. Furthermore no reason has been assigned in support of the said proposition of law".

23. This being the law, in our opinion, the Court cannot grant higher compensation to the claimants than the one claimed by them.

Thus, First Appeal No. 240 of 2000 is dismissed as we cannot find any error of law, fact or even in appreciation of evidence and in judgment of the Reference Court.

24. Other State appeals are partly allowed and we hold that the claimants would be entitled to uniform compensation at the rate of Rs.40,000 per hectare or any other amount they had claimed before the Collector and higher amount claimed before the Reference Court would not be tenable in view of the bar contained in the unamended provisions of section 25(2) of the Act. All the Civil Applications are also accordingly disposed of.

25. The claimants are also entitled to the statutory benefits payable in terms of section 23(1A) at the simple rate computed at the rate of 12% p.a. and would also be entitled to the benefit of provisions of sections 23(2) and 28 of the Act on the market value determined by this Court. It is needless to state that the State is at liberty to recover the excess amount, if any, paid to the claimants as per the Reference Court judgment. Consequently Cross Objection

(Stamp) No. 9177 of 2001 also stands dismissed. However, we leave the parties to bear their own costs. Decree be drawn up in terms of the above judgment.

CHIEF JUSTICE

DR D.Y. CHANDRACHUD, J.